Montana Health Care ASSOCIATION

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SENATE PUBLIC HEALTH COMMITTEE
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SENATE BILL 69
PENALTY FOR TRANSFER OF ASSETS TO QUALIFY FOR MEDICAID

The Montana Health Care Association represents long term care facilities throughout the state of Montana - including skilled nursing and assisted living facilities as well as home care agencies.

We support SB 69 because we believe it helps to assure that limited Medicaid resources are spent on those who truly are unable to provide for their own care. It also helps assure that the elderly who need care can in fact receive it and that nursing homes who provide the care are paid for their services.

Federal and state law require that assets transferred for less than fair market value within five years of application for Medicaid nursing home services are subject to evaluation to determine whether the transfer was made for the purpose of qualifying for Medicaid benefits. If the determination is made that the transfer was for purposes of qualifying for Medicaid, a "penalty period" applies, and Medicaid does not pay for the individual's nursing home care during the penalty period, which can be lengthy depending on the value of the asset transferred. Since the elderly person needing care has no resources to pay for the care, the result is one of two things - either (1) the nursing home provides care without being paid, or (2) the state determines there is a hardship because the individual's health and safety will be in jeopardy without the care and the state pays for the care. Either way, the resources of the individual, which should be available to pay for the care, are not available and not recoverable by the state.

SB 69 is similar to a law enacted by the state of Washington to help address this problem. It provides:

- that a person who receives an asset for less than fair market value from an applicant or recipient of Medicaid may be fined if a court determines that the asset was transferred to qualify the individual for Medicaid and the state Medicaid program paid for services for the individual to avoid undue hardship;

- that a court can impose a fine of 100-150 % of the amount the Medicaid program paid because of the transfer, plus the department's court costs and attorney fees; and the court may also set aside the transfer and require the return of the asset to the individual seeking Medicaid services; and
- that fines collected go to the general fund.

This legislation is important because it serves as a strong deterrent to asset transfers made to qualify for Medicaid. Washington officials indicate they have not had to actually bring a court action under this legislation or to have the penalties imposed, but have in fact recovered property which was then used to pay for nursing home care. One example was a summer home with a value of about $300,000 which was returned to the nursing home resident and available as a resource to pay for care, rather than Medicaid paying for the care.

We believe this legislation benefits the consumer, the nursing home and the state by assuring that those who need care have a source of payment for the care and assuring that Medicaid pays only when other resources are not available.

Please support SB 69.

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from Final Report
Select Comm. on Efficiency in Gov't

Issue 5 Summary: Penalty for Transfer of Assets

With some exceptions, Medicaid applicants for long-term care may not transfer assets in the 5-year period before they apply for Medicaid if the transfer is designed to allow them to qualify for Medicaid coverage. Medicaid applicants may be penalized with a loss of eligibility if they are found to have improperly transferred assets. At least one state has taken steps to also penalize the people who receive improperly transferred assets.

Action or Recommendation: The Committee recommends that the 63rd Legislature enact LC 151 to allow imposition of a civil penalty against someone who receives assets that were transferred in order to allow another person to qualify for Medicaid coverage of long-term care costs.

Discussion: The matter of improperly transferred assets arose at the Subcommittee's October 2011 meeting, when stakeholders brought a Washington state law to the Subcommittee's attention. That law, passed in 1995, allows a court to impose a civil penalty against the recipient of the assets. The fine can be up to 150% of the value of the improperly transferred asset. The fine may be imposed if the asset transfer resulted in a period of ineligibility for the Medicaid applicant, but the state still provided Medicaid during that time because denial of coverage would have created an undue hardship for the applicant.

The Subcommittee received information from Washington state indicating that the state hasn't compiled specific data about the use or effects of the law. However, officials there believe it has served as a deterrent. They say that when they notify people about the law and the potential penalty, individuals who have received assets in a questionable manner often return the asset. The asset then is available to pay for long-term care.

Findings and Conclusions: Testimony indicated the state would benefit from stronger efforts to prevent people from transferring assets because people can use their assets, rather than Medicaid, to pay for the costs of their long-term care. Testimony also indicated that a law creating a penalty for people who receive improperly transferred assets may serve as a deterrent for such transfers. Consequently, the committee concluded that adopting a law similar to the Washington state law could create savings for Montana's Medicaid program.

Action or Recommendation: The Committee recommends that the 63rd Legislature enact LC 151 to create a civil penalty for individuals who receive improperly transferred assets from individuals who apply for Medicaid coverage of long-term care costs.

SELECT COMMITTEE ON EFFICIENCY IN GOVERNMENT

Washington's Transfer of Assets Law

Prepared by Sue O'Connell for the Medicaid Subcommittee
January 2012

Background

The Medicaid Subcommittee expressed interest in November 2011 in obtaining more information about the effects of a Medicaid law in Washington state. The law allows prosecution of an individual who receives assets from a Medicaid applicant or enrollee in order to allow the person to qualify for Medicaid coverage of long-term care services.

This briefing paper discusses Medicaid laws related to asset transfers, as well as the Washington law and its effects. It also presents options for subcommittee consideration.

Asset Determination Related to Long-Term Care

A person applying for Medicaid coverage for long-term care may not have more than $2,000 in "countable resources," or assets. Some assets are not counted when determining eligibility. For example, a person's home, most personal effects, one vehicle, and property used for business purposes typically aren't considered when determining whether a person qualifies for Medicaid.

Federal law requires a 5-year "look back" at a person's assets, to make sure the person didn't improperly transfer assets during that time in order to qualify for Medicaid. An applicant or enrollee who transferred an asset without receiving something of equal value is ineligible for Medicaid for a period of time. The time period is determined by dividing the uncompensated amount of the transferred asset by the average monthly cost of nursing home care. In 2010, the average monthly cost of nursing home care in Montana was $5,376.50.[1]

Some transfers are exempt from the "look back," including transfers made:

- to a spouse before a person was determined eligible for Medicaid;
- to a spouse who is living in the community, if the transfer was made within 90 days of the eligibility determination;
- to a minor or adult child who is blind or disabled according to Social Security criteria;
- solely for a purpose other than qualifying for Medicaid, such as to satisfy a debt;
- as a result of fraud, if the applicant tried through the courts to recover the asset; or
- to a disabled person's Special Needs Trust, which must be used upon the person's death to reimburse Medicaid for payments made on behalf of the individual.

In addition, the transfer of a home is not counted if the title was transferred to the applicant's spouse; a child under the age of 21; an adult child who is blind or disabled; a child who regardless of age lived with the applicant in the 2 years immediately preceding the person's nursing home admission if the child provided care to the person in the home; or a sibling who

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[1] Marsha A. Goetting, "Medicaid and Long-Term Care Costs," Montana State University Extension Services, Oct. 10, 2010, P. 1.

has an equity interest in the home and has lived there continually for at least 1 year before the applicant was admitted to a nursing home.

The Washington Law: What It Does and What It Has Accomplished

In 1995, the Washington Legislature approved a law creating a penalty for people who receive assets for less than fair market value from a person who applies for or receives Medicaid for long-term care services. The recipient of the assets is subject to a civil fine if:

- the Medicaid applicant or enrollee transferred the asset in order to qualify for coverage;
- the recipient was aware, or should have been aware, of the purpose of the transfer;
- the transfer created a period of ineligibility for the Medicaid applicant or enrollee; and
- the state provided Medicaid during that time because denial of coverage would have created an undue hardship for the applicant or enrollee.

A court may impose a fine of up to 150% of the amount that the state spent on Medicaid coverage during the time that the enrollee would have been ineligible for coverage because the asset could have been used to pay for nursing home care. The recipient of the asset also must pay the state's court costs and legal fees. Meanwhile, the state may petition to have the asset returned to the Medicaid applicant or enrollee.

Lori Rolley of the Washington Department of Social and Health Services (DSHS) provided the following information about Washington's experience with the law:

- The state hasn't compiled data specific to the use or effects of the law.

- Officials believe the law has served as a deterrent. DSHS notifies people about the law and the penalty when DSHS employees believe the individuals may have received assets in a questionable manner. This often results in the return of the asset.

- The state Attorney General's Office began preparing one prosecution under the law but decided against proceeding with the case because of perceived weaknesses in the law. The agency has prepared legislation to correct those weaknesses.

Options for Subcommittee Consideration

Based on the information presented to the subcommittee during the course of its work, members may want to recommend that the full committee:

1. Find that the state would benefit from stronger efforts to prevent people from transferring assets in an effort to qualify for Medicaid coverage of long-term care costs.

2. Approve drafting of a transfer-of-assets bill similar to the Washington state law.

3. Make no findings or recommendations.

4. Pursue other options identified by the subcommittee.